

FILED

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTY-TH JUDICIAL DISTRICT AT NASHVILLE

RICHARD R. ECKER, CLERK

STATE OF TENNESSEE, *et al*
ROBERT E. COOPER, JR., ATTORNEY
GENERAL and REPORTER,

Plaintiff,

v.

MICHAEL H. SNEED,

Defendant.

Case No. 09C2025

MEMORANDUM OF LAW IN SUPPORT OF
STATE'S MOTION FOR STATUTORY TEMPORARY INJUNCTION

The State has initiated a civil law enforcement proceeding brought by the Attorney General of the State of Tennessee ("Attorney General" or "State"), pursuant to the Unauthorized Practice and Improper Conduct statutes¹ ("Unauthorized Practice of Law statutes" or "UPL statutes"), the Tennessee Consumer Protection Act of 1977² ("TCPA"), and the Attorney General's authority at common law, to secure injunctive and other equitable relief prohibiting the Defendant from engaging in the practice of law or law business when Defendant Sneed does not possess a Tennessee law license and from engaging in other unfair or deceptive acts or practices.

As an overview, Defendant has misrepresented to consumers and other third parties, including other attorneys³ and judges,⁴ that Defendant Sneed is a currently licensed attorney in the State of Tennessee. Defendant has misled consumers regarding his ability to provide legal

¹Tenn. Code Ann. § 23-3-101 *et seq.*

²Tenn. Code Ann. § 47-18-101 *et seq.*

³ See Mar. 6, 2009 Letter from Mr. Sneed, attachment A to Affidavit of Richard Tompkins, Ex. D of the Motion.

⁴ See Affidavit of Judge Amanda McClendon, attached as Ex. C to the Motion.

services during his suspension. The Defendant has advertised his legal services subsequent to his suspension from the practice of law⁵ and continues to use letterhead stating he is an “attorney at law” during his suspension.⁶

For the reasons more fully stated below, a temporary injunction should issue after a full hearing on this matter.

PARTIES

1. Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, is charged with enforcing the UPL statutes, which prohibits engaging in the practice of law or doing law business unless the person has been duly licensed⁷ and the TCPA, which prohibits unfair or deceptive acts or practices affecting the conduct of trade or commerce. Pursuant to Tenn. Code Ann. § 23-3-103(c)(1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the UPL statutes. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General, at the request of the Division of Consumer Affairs, may initiate civil law enforcement proceedings in the name of the State to stop violations of the TCPA and to secure such equitable and other relief as may be appropriate in each case.
2. Defendant Michael H. Sneed is an individual residing in Davidson County, Tennessee and with a business address of 525 Gallatin Pike South, Madison, Tennessee 37115, also in Davidson County, Tennessee. From this address Mr. Sneed is and has been promoting himself as an attorney currently licensed to practice law and promoting his law business to consumers. At all times relevant hereto, Defendant Michael Sneed has actively

⁵ See Affidavit of Armando Quintero, attached as Ex. B to the Motion.

⁶ See Mar. 6, 2009 Letter from Mr. Sneed, attachment A to Affidavit of Richard Tompkins, Ex. D of the Motion.

⁷ Tenn. Code Ann. § 23-3-103(a).

participated in the acts and practices at issue in the Complaint, including the unlawful conduct alleged herein and/or has the authority and/or control to stop Defendant's violations of the law.

STATEMENT OF FACTS

Defendant Michael H. Sneed was licensed to practice law in Tennessee in 1985. On February 24, 2009, the Tennessee Supreme Court issued an Order of Enforcement suspending the Defendant from the practice of law for a period of eighteen (18) months.⁸ As a result of that Order, since February 24, 2009, it has been unlawful for Defendant Sneed to engage in law business or the practice of law in the State of Tennessee.⁹

Subsequent to his suspension from the practice of law in Tennessee, Defendant has continued to represent consumers in legal matters. On March 6, 2009, the Defendant informed opposing counsel he had been retained to represent a litigant in a child support matter in Sumner County.¹⁰ The letter was written on letterhead which clearly states that Defendant is an attorney at law.¹¹ Additionally, while suspended, Defendant Sneed, on behalf of clients, attempted to schedule a motion to be heard in Davidson County Circuit Court¹² and filed three (3) motions in the Davidson County Circuit Court.¹³

Defendant Sneed continued to promote his "law business" to consumers, in the form of radio advertisements¹⁴ and a sign posted at his office¹⁵, which identified the Mr. Sneed as an

⁸ See Order of Enforcement, attached as Ex. A to the Motion.

⁹ *Id.*; Tenn. Code Ann. § 23-3-103(a).

¹⁰ See Mar. 6, 2009 Letter from Mr. Sneed, attachment A to Affidavit of Richard Tompkins, Ex. D of the Motion.

¹¹ See Mar. 6, 2009 Letter from Mr. Sneed, attachment A to Affidavit of Richard Tompkins, Ex. D of the Motion.

¹² See Affidavit of Judge Amanda McClendon, attached as Ex. C to the Motion.

¹³ See Certified Copies of Filed Motions, attached as Collective Ex. G to the Motion.

¹⁴ See Affidavit of Armando Quintero, attached as Ex. B to the Motion.

¹⁵ See Affidavit of Nathan Casey, attached as Ex. H to the Motion.

attorney. On February 23, 2009, just one day before his suspension was made final, Defendant Sneed purchased ads which were set to air between March and July.¹⁶ The ads encouraged consumers to call “attorney” Michael Sneed for “legal situations.”¹⁷ In an attempt to target the already vulnerable Hispanic community, these advertisements were in Spanish and aired during a popular radio show. At no point after his suspension did the Defendant call to advise the station that the advertisements should stop running.¹⁸ Eventually, the radio station was informed of Defendant Sneed’s suspension by the Board of Professional Responsibility and removed the ads from their programming.¹⁹

Under the February 24, 2009 Order, Defendant was required to comply with all aspects of Supreme Court Rule 9, §18, including notifying all clients being represented in pending matters of his suspension.²⁰ Not only has the Defendant failed to do this, he continues to be listed as the attorney of record on twenty-six (26) cases in the Davidson County Circuit Court.²¹ In at least three (3) of these cases, Defendant has filed motions since being suspended,²² one of which requested a hearing be set on April 17, 2009.

ARGUMENT

I. THE DEFENDANT HAS ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW.

The Tennessee UPL statutes prohibit persons from engaging in the “practice of law” or “law business” unless the person is duly licensed to practice law.²³

¹⁶ See Affidavit of Armando Quintero, attached as Ex. B to the Motion.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ Order of Enforcement, attached as Ex. A to the Motion.

²¹ See Affidavit of Glenn Balletto, attached as Ex. F to the Motion.

²² See Certified Copies of Filed Motions, attached as Collective Ex. G to the Motion.

²³ Tenn. Code Ann. § 23-3-101 *et seq.*

Tenn. Code Ann. § 23-3-101(1) defines “law business” as:

the advising or counseling for valuable consideration of any person as to any secular law, or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document, or instrument affecting or relating to secular rights, or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services.

Tenn. Code Ann. § 23-3-101(3) defines “practice of law” as:

the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

The Tennessee Supreme Court, which is the final arbiter regarding unauthorized practice of law issues, has held that the conduct described in the statutory definition of “law business,” “if performed by a non-attorney[,] constitute[s] the unauthorized practice of law only if the doing of those acts requires the ‘professional judgment of a lawyer.’”²⁴ Whether conduct constitutes the unauthorized practice of law thus depends upon the particular facts of each case.

The Defendant has engaged in “law business” by representing clients in various ways including appearing in Immigration Court,²⁵ filing motions on behalf of clients,²⁶ contacting judges to reschedule hearings,²⁷ and informing opposing attorneys of the Defendant’s retention by a client in the legal matter at hand.²⁸ In each instance, the Defendant was acting in a representative capacity which required the “professional judgment of a lawyer.” These acts also

²⁴ *In re Petition of Burson*, 909 S.W.2d 768, 776 (Tenn. 1995).

²⁵ See Affidavit of James Thomas Davis, attached as Ex. E to the Motion.

²⁶ See Certified Copies of Filed Motions, attached as Collective Ex. G to the Motion.

²⁷ See Affidavit of Judge Amanda McClendon, attached as Ex. C to the Motion.

²⁸ See Affidavit of Richard Tompkins, attached as Ex. D to the Motion.

constitute the “practice of law” as they were “in connection with proceedings pending or prospective before any court.”

Defendant has further engaged in “law business” without a license to practice law in Tennessee in violation of § 23-3-103(a) by advertising his services as an attorney on a Spanish radio station.²⁹ The advertisements were an attempt to solicit clients to provide services which require the professional judgment of a lawyer, such as representing consumers in “legal situations.”

II. DEFENDANT’S ACTS AND PRACTICES VIOLATE THE TENNESSEE CONSUMER PROTECTION ACT OF 1977.

The Tennessee Consumer Protection Act of 1977 (“TCPA” or “Act”)³⁰ is Tennessee’s version of a “Little FTC Act.”³¹ The model for the TCPA was developed by the Federal Trade Commission in conjunction with the Committee on Suggested State Legislation of the Council of State Governments and is patterned after Alternative # 3 of the Unfair Trade Practices and Consumer Protection Law.³² The TCPA has two main operative provisions: § 104(a) prohibits “[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,”³³ and § 104(b) develops categories of thirty-six prohibited acts and practices which constitute *per se* deception under the Act.³⁴ Furthermore, the Act reaches conduct that is not placed into these statutory categories.

²⁹ See Affidavit of Armando Quintero, attached as Ex. B to the Motion.

³⁰ Tenn. Code Ann. § 47-18-101 *et seq.*

³¹ “The little FTC Acts were so designated because of their similarity to the provision of the Federal Trade Commission Act that outlaws unfair or deceptive trade practices.” *Tucker v. Sierra Builders, Inc.*, 180 S.W.3d 109, 114 (Tenn. Ct. App. 2005).

³² See Council of State Governments, 1970 Suggested State Legislation, Unfair Trade Practices and Consumer Protection Law - Revision (Vol. XXIX), Clearinghouse No. 31, 035 B, Compendium of Unreported and Out-of-State Decisions, filed herewith. See also D. Pridgen, *Consumer Protection and the Law*, § 3:5 (2002).

³³ Tenn. Code Ann. § 47-18-104(a).

³⁴ Tenn. Code Ann. § 47-18-104(b).

The TCPA was not intended to be a codification of the common law and its scope is much broader than that of common-law fraud:³⁵

To the contrary, one of the express purposes of the TCPA is to provide additional supplementary state law remedies to consumers victimized by unfair or deceptive business acts or practices that were committed in Tennessee in whole or in part.³⁶

Through the TCPA, the State can better protect against business practices that harm consumers and damage the integrity of the marketplace. Under the TCPA, recovery can be obtained without having to meet the burden of proof that is required in a common law fraud case, and the numerous defenses that are available to a defendant in a common law fraud case are simply not available to a defendant in a TCPA case.³⁷ An act or practice can be deceptive even if there is no intent to deceive,³⁸ knowledge of the deception,³⁹ or reliance.⁴⁰ Negligent misrepresentations can violate the statute⁴¹ and the State does not need to prove that any consumer was actually misled or deceived in order to prove that a violation of law has occurred.⁴²

The TCPA is a remedial statute⁴³ which must be “liberally construed to . . . protect consumers and legitimate business enterprises from those who engage in deceptive acts or

³⁵ *Tucker*, 180 S.W.3d 109 at 115.

³⁶ *Id.* (citing Tenn. Code Ann. § 47-18-102(2) and (4)).

³⁷ *Tucker*, 180 S.W.3d at 115 (citing *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980)).

³⁸ *Smith v. Scott Lewis Chevrolet, Inc.*, 843 S.W.2d 9, 12-13 (Tenn. Ct. App. 1992); *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934); *Doherty, Clifford, Steers & Shenfield, Inc. v. FTC*, 392 F.2d 921, 925 (6th Cir. 1968).

³⁹ *Smith*, 843 S.W.2d at 12-13.

⁴⁰ *Harvey v. Ford Motor Credit Co.*, No. 03A01-9807-CV-00235, 1999 WL 486894, at *2 (Tenn. Ct. App. July 13, 1999).

⁴¹ *Smith*, 843 S.W.2d at 13.

⁴² *Tucker*, 180 S.W.3d at 115.

⁴³ *Tucker*, 180 S.W.3d at 115 (citing Tenn. Code Ann. § 47-18-115); *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 925 (Tenn. 1998); *Morris v. Mack Used Cars*, 824 S.W.2d 538, 540 (Tenn. 1992).

practices.”⁴⁴ The TCPA provides for a private right of action⁴⁵ and also vests civil enforcement authority with the Attorney General and the Division of Consumer Affairs.⁴⁶ In enacting the TCPA, the General Assembly intended to promote the policy of “maintaining ethical standards of dealing between persons engaged in business and the consuming public to the end that good faith dealings between buyers and sellers at all levels be had in [Tennessee].”⁴⁷

Aside from the categories which identify conduct as *per se* deceptive, the TCPA does not define “unfair” or “deceptive.”⁴⁸ In order to give the broadest scope possible to the protections embodied in the statute and in order to prevent ease of evasion because of overly meticulous definitions, consumer protection laws like the TCPA typically make no attempt to define “unfair” or “deceptive,” but merely declare that such acts or practices are unlawful, thus leaving it to the court in each particular case to determine whether there has been a violation of the statute.⁴⁹

Deception

Section 115 of the TCPA directs the TCPA to be interpreted “consistently with the interpretations given by the Federal Trade Commission and the federal courts pursuant to §5(A)(1) of the Federal Trade Commission Act.”⁵⁰ Federal Trade Commission case law currently

⁴⁴ Tenn. Code Ann. § 47-18-102(2); *Ganzevoort v. Russell*, 949 S.W.2d 293, 297 (Tenn. 1997); *Morris*, 824 S.W.2d at 540 (quoting *Haverlah v. Memphis Aviation, Inc.*, 674 S.W.2d 297, 305 (Tenn. Ct. App. 1984)).

⁴⁵ Tenn. Code Ann. § 47-18-109.

⁴⁶ Tenn. Code Ann. §§ 47-18-106 to 108.

⁴⁷ Tenn. Code Ann. § 47-18-102(4).

⁴⁸ See Tenn. Code Ann. § 47-18-103. See also *Tucker*, 180 S.W.3d at 115.

⁴⁹ D. Zupanec, *Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts*, 89 ALR 3d 449, 458 (1979). See also *Tucker*, 180 S.W.3d at 114; *Pan American World Airways v. United States*, 371 U.S. 296, 307-08 (1963).

⁵⁰ Tenn. Code Ann. § 47-18-115. See also *Tucker*, 180 S.W.3d at 115; *Ganzevoort*, 949 S.W.2d at 298.

holds that an act or practice is deceptive if it is “likely to deceive.”⁵¹ The Court of Appeals in *Tucker v. Sierra Builders*⁵² has looked to this definition, in holding that under the TCPA, deception is conduct that “causes or tends to cause a consumer to believe what is false, or that misleads or tends to mislead a consumer as to a matter of fact.”⁵³ Thus, the State need not prove that any consumer was actually misled or deceived - only that defendants’ conduct has a “tendency” to mislead or deceive.⁵⁴

Unfairness

The unfairness definition set forth by the FTC was also adopted in *Tucker v. Sierra Builders*.⁵⁵ The court followed the FTC policy statement on unfairness⁵⁶ and defined unfairness as an act or practice that “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”⁵⁷

Consumer injury will be deemed substantial “if a relatively small harm is inflicted on a large number of consumers or if a greater harm is inflicted on a relatively small number of consumers.”⁵⁸ Substantial injury “must be more than trivial or speculative.”⁵⁹ “Consumers

⁵¹ *FTC v. Consumer Alliance, Inc.*, No. 02C 2429, 2003 WL 22287364 at *4 (N.D. Ill. Sept. 30, 2003); *FTC v. Gill*, 71 F.Supp.2d 1030, 1037 (C.D. Cal. 1999), *aff’d*, 265 F.3d 944 (9th Cir. 2001). Earlier FTC case law referred to a “tendency” or “capacity” to deceive standard, *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965); *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934).

⁵² *Tucker*, 180 S.W.3d at 109.

⁵³ *Id.* at 115.

⁵⁴ *Id.* See also *Williams v. Bruno Appliance and Furniture Mart*, 379 N.E.2d 52, 54 (Ill. App. Ct. 1978).

⁵⁵ *Tucker*, 180 S.W.3d at 116-17.

⁵⁶ 15 U.S.C.A. § 45(n).

⁵⁷ *Tucker*, 180 S.W.3d at 116 (quoting 15 U.S.C.A. § 45(n)).

⁵⁸ *Tucker*, 180 S.W.3d at 116 (citing *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365 (11th Cir. 1988)).

⁵⁹ *Id.*

cannot reasonably avoid injury when a merchant's sales practices unreasonably create or take advantage of an obstacle to the free exercise of consumer decision-making."⁶⁰ "Practices that unreasonably interfere with consumer decision-making include (1) withholding important information from consumers, (2) overt coercion, or (3) exercising undue influence over a highly susceptible class of consumers."⁶¹

Holding oneself out as a lawyer when not licensed to practice law is unfair and deceptive.⁶² Consumers put their trust in an attorney believing him or her to be specially trained to assist them in legal matters. When an individual tells a consumer that he is an attorney, the consumer understandably assumes the individual has all the appropriate degrees and licenses to practice law. Therefore, it is deceptive to falsely claim to be an attorney because it misleads a consumer about a "matter of fact," *i.e.* that the individual is licensed to practice law. Further, it is unfair because the one so claiming unreasonably interferes with the consumer's decision-making by withholding the important fact that he is not licensed and therefore is unable to legally practice law in the State.

The Complaint and the Motion for Temporary Injunction allege and provide substantial evidentiary support for a myriad of separate and discrete acts and practices employed by Mr. Sneed which constitute "unfair" *and* "deceptive" conduct under well-settled federal law and the TCPA.⁶³ Most individual consumer transactions evidence a combination of several unlawful

⁶⁰*Id.*

⁶¹*Id.*

⁶² See *Banks v. Dep't of Consumer and Regulatory Affairs*, 634 A.2d 433, 437 (D.C. 1993) (holding that the Consumer Protection Procedures Act, D.C. ST, §§ 28-3901 et seq., applies to nonlawyers who purport to practice law). See also *State v. Noel*, No. 131112-2, at 1, Ch. Ct. of Tenn., 6th Jud. Dist., Knox County, Part II (July 31, 1996).

⁶³ Tenn. Code Ann. § 104(a) and (b).

acts and practices and almost always involve false assertions - conduct that readily qualifies as “unfair” and “deceptive.”

The facts indicate Defendant has both implicitly and directly, falsely stated that his license has not been suspended. On March 16, 2009, when asked multiple times by an Immigration judge if he was suspended, Defendant Sneed denied the suspension.⁶⁴ Further, Defendant Sneed claimed to represent clients when speaking or corresponding with judges⁶⁵ and opposing counsel.⁶⁶

Defendant’s consumer protection violations include but may not be limited to:

By advertising and representing the ability to prepare legal documents and provide legal representation and advice to consumers when Defendant is not and does not employ a licensed attorney, Defendant is causing confusion as to the lack of State authorization to practice law in Tennessee in violation of Tenn. Code Ann. § 47-18-104(b)(3).

By advertising and representing the ability to prepare legal documents and provide legal representation and advice when Defendant is not and does not employ a licensed attorney, Defendant is representing that his services have approval by the State that they do not have, in violation of Tenn. Code Ann. § 47-18-104(b)(5).

By advertising and representing the ability to prepare legal documents and provide legal representation and advice when Defendant is not and does not employ a licensed attorney, Defendant is representing that his services or goods are of a particular standard, quality or grade, when they are not, in violation of Tenn. Code Ann. § 47-18-104(b)(7).

By advertising and representing the ability to prepare legal documents and provide legal representation and advice when Defendant is not and does not employ a licensed attorney, Defendant is representing or implying that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve, in violation of Tenn. Code Ann. § 47-18-104(b)(12).

By advertising and representing the ability to prepare legal documents and provide legal representation and advice when Defendant is not and does not employ a licensed attorney, Defendant is using statements in advertisements

⁶⁴ See Affidavit of James Thomas Davis, attached as Ex. E to the Motion.

⁶⁵ See Affidavit of Judge Amanda McClendon, attached as Ex. C to the Motion.

⁶⁶ See Affidavit of Richard Tompkins, attached as Ex. D to the Motion.

which create a false impression of the quality or value of the goods or services offered, in violation of Tenn. Code Ann. § 47-18-104(b)(21).

By advertising and representing the ability to prepare legal documents and provide legal representation and advice to consumers when Defendant is not and does not employ attorneys licensed to practice law in Tennessee, Defendant is in violation of Tenn. Code Ann. § 47-18-104(b)(27).

III. THE TEMPORARY INJUNCTION SOUGHT BY THE STATE IS APPROPRIATE UNDER TENN. CODE ANN. §§ 23-3-103(c)(1) and (c)(3), and 47-18-108(a)(1) and (a)(4).

A. This Court Has the Authority to Grant the Requested Relief

The Attorney General of Tennessee has broad statutory and common law authority with respect to protecting the public.⁶⁷ The Tennessee Supreme Court has held that “[a]s the chief law enforcement officer of the state, the attorney general may exercise such authority as the public interest may require and may file suits necessary for the enforcement of state laws and public protection.”⁶⁸

Tenn. Code Ann. § 23-3-103(c)(1) of the UPL statutes states:

The attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction, or permanent injunction any violation of this part . . .

Section 108(a)(1) of the TCPA authorizes the Attorney General to bring an action in the name of the State whenever there is reason to believe a party has engaged in, is engaging in, or is about to engage in any act or practice prohibited by the TCPA and that the proceedings would be in the public interest.⁶⁹

⁶⁷ Tenn. Code Ann. § 8-6-109(b)(1). *State ex rel. Inman v. Brock*, 622 S.W.2d 36, 41 (Tenn. 1981); *State v. Heath*, 806 S.W.2d 535, 537 (Tenn. Ct. App. 1991).

⁶⁸ *Heath*, 806 S.W.2d at 537.

⁶⁹ Tenn. Code Ann. § 47-18-108(a)(1).

In the ordinary case, traditional equitable injunctions require that the trial judge's discretion balance four factors. The most common description of the standard for a preliminary injunction is a four-factor test: (1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendants; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.⁷⁰ While all of these factors are to be considered, they are not prerequisites which must be met.⁷¹

Tenn. R. Civ. P. 65.04 states the standard for the issuance of a temporary injunction is if:

[I]t is clearly shown by a verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment . . . or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

In cases such as this one, where a law enforcement authority, like the Attorney General, acts as a "statutory guardian charged with safeguarding the public interest," the standard for a temporary injunction is lower than the traditional standard applied to private litigants.⁷² The

⁷⁰ *South Cent. R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 (Tenn. Ct. App. 2000), *perm. app. denied* (quoting Banks & Entman, TENNESSEE CIVIL PROCEDURE § 4-3(l) (1999)); *Tesmer v. Granholm*, 333 F.3d 683, 702 (6th Cir. 2003)(reversed on other grounds); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)(citing only two components: "The traditional standard for granting a preliminary injunction requires the plaintiff to show that the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits.").

⁷¹ *Frisch's Restaurant, Inc. v. Shoney's, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985).

⁷² *State v. Virula*, No. 08C651, at 2, Cir. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part I (Mar. 18, 2008); *State v. ExpyFi*, No. 07C3365, at 2, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Nov. 21, 2007); *State v. Froehlig*, No. 33293, at 2, Ch. Ct. of Tenn., 21st Jud. Dist., Williamson County (Mar. 2, 2007); *State v. Olomoshua*, No. 06C2912, at 2, Cir. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Nov. 14, 2006); *Tennessee Real Estate Comm'n v. Hamilton*, No. 96-3330-III, at 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff'd*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998); *FTC v. Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634 (M.D.

authorization to the Attorney General to seek injunctive and other equitable relief constitutes the legislative determination that an irreparable injury has already occurred in any violation of the Act.⁷³ “Unlike private actions, which are rooted in the equity jurisdiction of the courts, in suits based upon statutory authority, proof of irreparable harm or the inadequacy of other remedies is not required.”⁷⁴ “[W]here a government entity demonstrates a substantial showing of a violation of a statute, such violation is sufficient to establish immediate and irreparable harm.”⁷⁵ Irreparable injury, therefore, need not be shown⁷⁶ and harm to the public is presumed.⁷⁷ “The standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief.”⁷⁸

Tenn. Aug. 18, 2005); *Microsoft Corp. v. Action Software*, 136 F.Supp. 2d 735, 738-39 (N.D. Ohio 2001). See also *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2nd Cir. 1975); *FTC v. World Wide Factors*, 882 F.2d 344, 346 (9th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988) *The Virginia Beach SPCA, Inc. v. S. Hampton Roads Veterinary Ass’n.*, 329 S.E.2d 10, 13 (Va. 1985).

⁷³ 11 Wright & Miller, *Federal Practice and Procedure*, 461-62 (1973).

⁷⁴ *Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005) (internal citations omitted); see also *State v. Olomoshua, et al*, No. 06C2912, at 2, Cir. Ct. of Tenn., 20th Jud. Dist, Davidson County, Part III (Nov. 14, 2006); *State v. Continental Distributing Co., Inc.*, Ch. Ct. of Tenn., 11th Jud. Dist., Hamilton County (Oct. 7, 1994).

⁷⁵ *Tennessee Real Estate Comm’n v. Hamilton*, No. 96-3330-III, p. 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff’d*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998).

⁷⁶ *State v. Continental Distributing Co., Inc.*, Ch. Ct of Tenn., 11th Jud. Dist., Hamilton County (Oct. 7, 1994); *SKS Merch., LLC v. Barry*, 233 F.Supp.2d 841, 845 (E.D. Ky. 2002); *FTC v. Int’l Computer Concepts, Inc.*, No. 594CV1678, 1994 WL 730144 at *12 (N.D. Ohio Oct. 24, 1994); *World Travel Vacation Brokers*, 861 F.2d at 1029. see also *People, ex rel. Hartigan v. Stianos*, 475 N.E.2d 1024, 1027-28 (Ill. App. 1985); *State v. Fonk’s Mobile Home Park & Sales*, 343 N.W.2d 820, 821 (Wis. App. 1983); *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 370-71 (Mo. App. 1973); *United States v. Sene X Eleemosynary Corp.*, 479 F.Supp. 970, 980-81 (S.D. Fla. 1979).

⁷⁷ *Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005) (internal citations omitted); see also *Hecht Co. v. Bowles*, 321 U.S. 321, 331 (1944); *World Travel Vacation Brokers*, 861 F.2d at 1029.

⁷⁸ *Bowles*, 321 U.S. at 331.

This case is especially well-suited for a temporary injunction. Section 103(c)(1) of the UPL statute provides that “(t)he attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction, or permanent injunction any violation of this part; . . . ,”⁷⁹ and further states “(t)he courts are authorized to issue orders and injunctions to restrain, prevent and remedy violations of this part, the orders and injunctions shall be issued without bond.”⁸⁰ Further, the TCPA provides that “whenever the division has reason to believe that any person has engaged in . . . is about to engage in any act or practice declared unlawful by this part and that proceedings would be in the public interest . . . ”⁸¹ that “(t)he courts are authorized to issue orders and injunctions to restrain and prevent violations of this part, and such orders and injunctions shall issue without bond.”⁸² Further, courts have consistently imposed temporary injunctions where, as here, there is evidence of widespread and pervasive deception and unlawful activity.⁸³

B. The Evidence Presented Justifies Entry of a Temporary Injunction

The State has submitted compelling evidence which establishes that Defendant Sneed has engaged in the unauthorized practice of law and other unfair or deceptive acts or practices associated with the operation of his businesses.

⁷⁹Tenn. Code Ann. § 23-3-103(c)(1).

⁸⁰Tenn. Code Ann. § 23-3-103(c)(3).

⁸¹Tenn. Code Ann. § 47-18-108(a)(1).

⁸²Tenn. Code Ann. § 47-18-108(a)(4).

⁸³ See also *FTC v. Amy Travel Service*, 875 F.2d 564, 571-72 (7th Cir. 1989); *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 907 (7th Cir. 1989); *World Travel Vacation Brokers*, 861 F.2d at 1026-28; *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 718-19 (5th Cir. 1982).

1. Defendant's Misrepresentations That He is a Licensed Attorney Able to Provide Legal Services to Consumers Established Irreparable Harm.

While, as previously discussed, the State need not show immediate and irreparable harm under a statutory injunction, the State has established irreparable harm because evidence exists that Defendant Sneed falsely promoted himself as a licensed attorney able to provide legal services to Tennessee consumers. Consumers who obtain the services of an attorney likely assume those services come with certain protections, such as malpractice insurance or escrow accounts, which are normally employed by a licensed professional. Since Mr. Sneed is no longer licensed, he may not have the safeguards consumers expect. Further, consumers who rely on Mr. Sneed's assurances will see their legal rights permanently diminished as they proceed without the advice of a licensed attorney. For example, since Defendant Sneed has been suspended and is unable to practice law in the State, hearings for his clients have been indefinitely postponed until his suspension is over or a new attorney is hired.⁸⁴ This delay could have serious and irrevocable repercussions in the consumers' cases.

2. The State Has Demonstrated a Likelihood of Success on the Merits

The Sixth Circuit Court of Appeals has held that "[i]n order to establish a likelihood of success on the merits of a claim, a plaintiff must show more than a mere possibility of success."⁸⁵ "However, it is ordinarily sufficient if the plaintiff has raised questions going to the merits so serious, substantial, difficult, and doubtful as to make them fair grounds for litigation and thus for more deliberate investigation."⁸⁶

As evidenced by the Statement of Facts in Part I of this memorandum and the State's Complaint, the State's Motion for a Temporary Injunction and Exhibits including affidavits, the

⁸⁴ See Affidavit of Judge Amanda McClendon, attached as Ex. C to the Motion.

⁸⁵ *Six Clinics Holding Corp., II v. CAFCOMP Systems*, 119 F.3d 393, 407 (6th Cir.1997).

⁸⁶ *Id.*

State has demonstrated a likelihood of success on the merits with regard to its claims arising under the UPL statutes and the Tennessee Consumer Protection Act. The evidence offered clearly shows that Mr. Sneed has continued his law practice after his suspension became final on February 24, 2009. Therefore, the State has certainly raised questions that go to the merits that are so serious and substantial as to make them fair grounds for litigation.

For purposes of the temporary injunction hearing, Tennessee state courts,⁸⁷ federal courts,⁸⁸ and the Tennessee Rules of Civil Procedure⁸⁹ all allow for the admittance of affidavits over hearsay objections. Tenn. R. Civ. P. 65.04 expressly allows for the use of a “verified complaint, affidavit, or other evidence.” The affidavits and accompanying exhibits to the Motion are identical to the verified complaint and the affidavit in that the witness swears or affirms that the facts he or she has stated are the truth or are truthful to the best of his or her knowledge.

3. The Balance of Equities Mandates a Temporary Injunction

The balance of equities mandates temporary injunctive relief. Where, as here, public and private equities are at issue, public equities far outweigh private equities.⁹⁰

Defendant’s past misconduct “gives rise to the inference that there is a reasonable likelihood of future violations.”⁹¹ Further, Defendants can have no vested interest in a business

⁸⁷ *Denver Area Meat Cutters and Employers Pension Plan v. Clayton*, 120 S.W.3d 841, 857 (Tenn. Ct. App. 2003).

⁸⁸ See, e.g., *Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *2.

⁸⁹ Tenn. R. Civ. P. 65.04(2) (“A temporary injunction may be granted during the pendency of an action if it is clearly shown by *verified complaint, affidavit* or other evidence that the movant’s rights are being or will be violated by an adverse party. . .”).

⁹⁰ *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989).

⁹¹ *SEC v. R. J. Allen & Assoc., Inc.*, 386 F.Supp. 866, 877 (S.D. Fla. 1974); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979)(“Once a violation is demonstrated, the moving party need only show that there is some reasonable likelihood of future violations.”) (citations omitted).

activity that is unlawful.⁹² Without the entry of the proposed temporary injunction, Defendant will likely continue to represent consumers in legal matters when it is unlawful for him to do so.

Past misconduct is “highly suggestive of the likelihood of future violations,” especially where, as here, there is a pattern of unlawful conduct as opposed to an isolated occurrence.⁹³ The record establishes that Defendant Sneed has routinely falsely represented his status as an attorney in Tennessee after his suspension and continued to practice law without a license.

CONCLUSION

Consumers in Tennessee have suffered, and continue to suffer, monetary losses and other losses as a result of Defendant’s violations of the TCPA and the UPL statutes as set forth above. Consumer losses stem not from isolated or sporadic commercial episodes, but rather from the systematic and continuing use of unfair and deceptive acts and practices. The Defendant has been unjustly enriched as a result of his violations of the TCPA and UPL statutes at the expense of consumers. Absent injunctive relief by this Court, Mr. Sneed is likely to continue to injure and exploit consumers, reap unjust enrichment, and harm the public interest. Therefore, the State of Tennessee respectfully requests that this Court grant the injunctive relief sought and enjoin Michael H. Sneed from holding himself out as a licensed attorney until his Tennessee law license is reinstated.

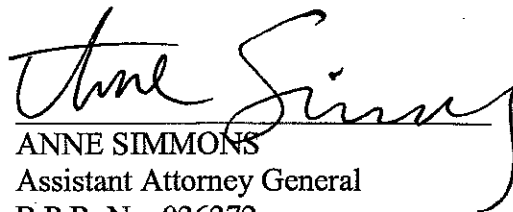
This is the first application by the Plaintiff, the State of Tennessee, for extraordinary relief in this matter.

⁹²*United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972).

⁹³ *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Anne Simmons", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent via facsimile and via U.S Mail on this the 23 day of June 2009 to:

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